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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058314
Party	Defendant Szul Jewelry, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TAPPER'S FINE JEWELRY, INC.,
a Michigan corporation,
Petitioner

v.

SZUL JEWELRY, INC.,
a New York corporation,
Registrant

In the matter of
Registration No. 3,450,842
For the mark: ROCK HER WORLD

Registered upon the Principal Register
On June 17, 2008

Cancellation No. 92058314

REGISTRANT'S MOTION TO EXTEND
REPLY PERIOD FOR RESPONSE

**REGISTRANT'S MOTION TO EXTEND THE REPLY PERIOD
FOR RESPONSE TO THE PETITION FOR CANCELLATION**

Registrant, Szul Jewelry, Inc., hereby moves that the Trademark Trial and Appeal Board extend the reply period for responding to Petitioner's Petition to Cancel. The following brief supports this motion.

BRIEF IN SUPPORT OF REGISTRANT'S MOTION

INTRODUCTION

The mark ROCK HER WORLD was registered upon the Principal Register on June 17, 2008, Registration No. 3,450,842. On December 2, 2013, Petitioner filed a Petition for Cancellation of this registration, and the Board instituted these proceedings on December 4, 2013, setting the deadline for response as January 13, 2014.

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However, due to sudden illness, exacerbated by the press of the holidays and travel preventing consultation with an attorney, Petitioner was unable to file an Answer to the Petition to Cancel by this deadline.

Having now contacted counsel, Registrant now seeks to extend the period for response and file an Answer to this petition.

ARGUMENT

Registrant submits that an extension of two days does not risk any prejudice to Petitioner, that the Board strongly favors resolution of disputes on their merits, and that delay due to travel and illness should be considered excusable.

While a response to a Petition for Cancellation must ordinarily be made within forty days of service, this response period may be extended if the failure to respond was due to a good and sufficient cause equivalent to “excusable neglect” under FRCP 6(b). The U.S. Supreme Court in *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership et al.*, 507 U.S. 380 (1993) has set forth the equitable analysis factors to determine whether a party’s neglect was excusable. These factors are: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on the judicial proceedings; (3) the reason for the delay and (4) whether the moving party acted in good faith.

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A. DANGER OF PREJUDICE

Registrant's delay in responding to the Petition for Cancellation does not prejudice in any way this cancellation proceeding. This delay in proceedings has not affected the availability of evidence or witnesses in any way. This proceeding is still in the introductory stages of the cancellation, with no motions having been made nor discovery served. The discovery period has not even yet opened, and no other deadlines have passed or are even close. Should Petitioner feel that this delay has in any way harmed its ability to proceed with its petition, Registrant herein stipulates to an extension of the discovery period by two weeks to address such a concern.

The only prejudice created by extending the period of time for response is that the Petition for Cancellation will be tested on its merits, a prejudice referred to as "insignificant" by the Board in *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293 (TTAB 1997). Registrant therefore submits that this lack of prejudice to Petitioner weighs in favor of granting Registrant's motion.

B. LENGTH OF DELAY AND POTENTIAL IMPACT ON PROCEEDING

The length of delay has been a total of two days. This proceeding is still in the opening stages: none of the discovery or testimony period are even open, let alone closed, nor are any deadlines approaching. Registrant is filing this request electronically (and will be sending a courtesy copy to Petitioner's counsel by e-mail), which means that this motion

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and the accompanying Answer to the Petition for Cancellation will be received by Petitioner sooner than if it had just been mailed on the deadline.

Registrant therefore contends that the minimal impact on these proceedings weighs in favor of this motion.

C. THE REASON FOR THE DELAY

When Registrant received the Petition for Cancellation, it was unaware of the formality of the proceeding and the need for response by the deadline. Unfortunately, it was unable to consult with counsel during the last few weeks before the deadline.

Registrant was closed during the holidays and for a week after New Year's. The employee handling this matter at Registrant was then out of the country for a week in India, and returned only Sunday, but was then out of the office for the last two days dealing with a bad stomach virus he had contracted while traveling. Today was the first day that this matter could be addressed, so this motion has been filed as swiftly as possible.

Registrant would contend that the last issue alone should be sufficient to grant this extension, that given an sudden and unexpected illness taking the responsible employee out of the office, an extension of two days is appropriate, and that travel and the holidays preventing Registrant from being in contact with counsel should further render this neglect excusable.

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D. GOOD FAITH OF APPLICANT

Registrant's failure to respond during the prescribed period was not the result of bad faith. As discussed above, it was the result of unexpected illness and being unavailable for consultation with counsel. No gamesmanship or fraud has taken place.

CONCLUSION

Allowing the Petition for Cancellation to be treated as uncontested would be the most severe sanction the Board could render. Registrant urges the Board to exercise its discretion in preference for a merits-based resolution of this dispute.

Accordingly, after consideration of the circumstances of this case and after balancing the relevant factors, Registrant respectfully requests that the Board extend the response period for responding to Petitioner's Petition for Cancellation.

Respectfully submitted,

/Brian R. Gibbons/

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Attorney for Registrant

1/15/2014

Date

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Kenneth I. Kohn, Kohn & Associates PLLC, 30500 Northwestern Highway, Farmington Hills, MI 48334 on January 15th, 2014.

/Brian R. Gibbons/

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